

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH
NEW DELHI

C... No. 743/1994

Date of decision 20th April 1995

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. Sh.S. Velumani,
Deputy Secretary,
Ministry of Petroleum & Natural Gas,
Shashtri Bhawan,
New Delhi
2. Sh. Thomas Mathew,
Deputy Secretary,
National Commission for Backward Classes,
R.K.Puram, New Delhi.
3. Shri S.D. Rajora,
Deputy Secretary,
Ministry of Agriculture & Cooperation,
Krishi Bhawan,
New Delhi.
4. Shri Swaran Das,
Deputy Secretary,
Dept of Pension & Pensioners Welfare,
Lok Nail Bhawan, New Delhi.
5. Shri D.V.Gupta,
Deputy Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi.

.. Applicants

(By Advocate MS Raman Oberoi)

Versus

1. Union of India through
Secretary,
Ministry of Surface Transport,
Parliament Street, New Delhi
2. Joint Secretary, (Establishment),
Ministry of Surface Transport,
Parliament Street, New Delhi.
3. Secretary of Personnel & Training,
Ministry of Personnel, Public Grievances
& Pension,
North Block, New Delhi.
4. Secretary,
Ministry of Petroleum & Natural Gas,
Shashtri Bhawan,
New Delhi.
5. Secretary,
National Commission for Backward Classes,
R.K.Puram, New Delhi.

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6. Secretary,
Ministry of Agriculture,
Dept. of Agriculture Cooperation,
Krishi Bhawan,
New Delhi.
7. Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi.

.. Respondents

(By Advocate Shri C.Hari Shankar
proxy counsel for Sh.Madhav Panikar)

O R D E R

[Hon'ble Smt. Lakshmi Swaminathan, Member (J)]

This is an application filed by five applicants challenging the validity of the order dated 21.3.1994 (Annexure A-1) to restrain the respondents from effecting recovery from their salary on the basis of refixation of pay on the ground of wrong stepping up of their pay and to quash the administrative instructions issued by the Ministry of Finance (Department of Expenditure dated 16.6.1989 (Annexure A-5).

2. The brief facts of the case are that all the applicants in the O.A. belong to the Central Secretariat Service (CSS) and are working as Deputy Secretaries in different Ministries of the Government of India. In pursuance of the Fourth Central Pay Commission, the scales of pay were revised by orders dated 25.3.1987 and 31.3.1987 (Annexure A-2). These orders of the Ministry of Surface Transport provide that in pursuance of Note 7 of Rule 7 of the Central Civil Service (Revised Pay) Rules, 1986, the date of increments of the applicants be advanced to bring them

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at par with Sarvashri Mange Ram, P.S. Aggarwal and J.S. Bhatia as follows :-

	<u>Pay on</u> <u>1.1.1987</u> Rs	<u>Pay advanced</u> <u>u.e.f. 30.1.1987.</u> Rs
1. Shri S. Velumani	3400/-	3625/-
2. Shri Thomas Mathew	3500/-	3625/-
3. Shri S.D. Rajora	3400/-	3625/-
4. Shri Swaran Das	3400/-	3625/-
5. Shri D.V. Gupta	3400/-	3625/-

These orders also stepped up the pay of 3 other officers, namely, S/Shri T.R. Midha, Sudesh Kumar and K.S. Ramachandaran. These 3 persons had also challenged the order dated 21.3.1994 in another O.A. No. 738/94 by which the order of stepping up of pay was cancelled and refixed, after giving them show cause notices in pursuance of the judgment in the case of Alok Bhatnagar v. UOI (O.A. No. 1194/89 decided on 9.11.1989). The SLP filed against this judgment was dismissed by the Hon'ble Supreme Court ^{by} _{Order} dated 2.4.1990 (Annexure A-12). In the present case also, the applicants were given opportunity to represent against the cancellation of stepping up of pay orders (Annexures A-9 and A-10). The applicants have also filed a rejoinder more or less reiterating the stand taken by them in the O.A.

3. Learned counsel of both the parties were heard at length and I have also carefully perused the records.

4. Ms. Raman Oberoi, learned counsel for the applicant, has challenged the order dated 21.3.1994 on the following grounds :-

(i) That under FR 27, once the pay has been fixed, it cannot be reduced;

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(ii) The executive orders contained in the Department of Expenditure O.M. dated 16.6.1989 cannot supersede the statutory rules i.e. Note 7 of Rule 7 of the CCS (Revised Pay) Rules, 1986 and any vested right given by rules cannot be taken away by administrative instructions of 1989. She relies on Uday Pratap Singh v. State of Bihar (1995(1) SLJ SC 123), UOI v. Mohanty (1995(1) SC SLJ 220 and

(iii) The applicants belong to the same cadre of CSS as their juniors as per seniority list at Annexures A-17 and A-18 and, therefore, they fulfil the conditions laid down under Note 7, Rule 7 above.

5. Shri Hari Shanker, Proxy Counsel for the respondents relies on the O.B. Judgment in the case of T.R. Mirdha & Ors. v. UDI & Ors. (O.A. No. 738/94).

He submits that the pay was not fixed under F.R. 27 and the clarificatory instructions dated 16.6.1989 do not apply. He relies on clause (c) of Note 7 of Rule 7, which provide that 'if even in the lower post, the junior officer was drawing more pay in the pre-revised scale, then the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked to step up the pay of the senior officer'. The learned counsel states that the applicants have not impugned the disparity of pay between them and their juniors in the lower grade of Section Officers. By M.A. 4107/94, certain by the Respondents additional facts were brought on record to which a reply has also been filed by the ~~original~~ applicants on 20.12.1994. In the M.A., the respondents have

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clarified that in the grade of Section Officers, the applicants were getting lower pay than S/Shri P.G. Aggarwal, Mange Ram and J.S. Bhatia. They have also denied that the Civil List enclosed by the applicants is the seniority list and that all these officers belong to the same cadre for stepping up of pay. The applicants have opposed the stand taken by the respondents in the M.A. and stated that their pay was rightly stepped up under the statutory rules which have now been stepped down in accordance with O.M. instructions dated 16.6.1989, which is not permissible under the rules.

6. A perusal of the provisions of the CCS (Revised Pay) Rules, 1989 shows that certain conditions have to be fulfilled before the pay of the senior Government servant is to be stepped up to the pay fixed for the junior Govt. servant, when he is promoted to the higher post. The relevant provisions of Note 7, Rule 7 provide as follows :-

" Note 7 - In cases, where a senior Government servant promoted to a higher post before the 1st day of January, 1986 draws less pay in the revised scale than his junior who is promoted to the higher post on or after the 1st day of January, 1986, the pay of the senior Government servant should be stepped up to an amount equal to the pay as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Government servant subject to the fulfilment of the following conditions, namely :-

(a) both the junior and the senior Government servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre,

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(b) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical, and

(c) the anomaly should be directly as a result of the application of the provisions of Fundamental Rule 22-C or any other rule or order regulating pay fixation on such promotion in the revised scale. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked to step up the pay of the senior officer.

The order relating to refixation of the pay of the senior officer in accordance with the above provisions should be issued under Fundamental Rule 27 and the senior officer will be entitled to the next increment on completion of his required qualifying service with effect from the date of refixation of pay."

7. A perusal of the above provisions shows that the applicants have to fulfil the above conditions for allowing the claim for stepping up of pay at par with their juniors. As strenuously argued by Ms. Raman Oberoi, even if it is taken that the applicants and the juniors with whom they claim parity belong to the same cadre, which she says, therefore, is distinguishable from the facts in the case of Shri T.R. Midha and Others (Supra), and the pre-revised and revised scales of pay are identical, they have still to fulfil the conditions in clause (c) of Note 7 of Rule 7. The applicants contend that in that case, they are squarely covered by the judgment in Alok Bhatnagar (Supra) which has been upheld by the Supreme Court vide order dated 2.4.1990 (Annexure A-4). However, the applicants have not denied the particulars of pay given by the respondents in the grade of Section Officer in M.A. No. 4107/94. In the present case, there is no question of the executive instructions

dated 16.6.1989 superseding the provisions of Note 7
below Rule 7 ~~as~~ being contradictory to the Rule, as
was also observed in the judgment in the case of T.R. Mirdha. The judgment relied upon by the applicants
will, therefore, not assist them in the facts of this
case.

8. The stepping up of pay cannot be claimed as a
matter of right when the junior officer was already
drawing more pay in the pre-revised scale than his
senior in the lower grade. The judgment in the case
of Alok Bhatnagar (Supra) had observed that the impugned
order dated 22.9.1989 had brought the pay of the applic-
ants down with retrospective effect without reference
to any statutory provisions and giving a show cause
notice. It gave liberty to respondents to pass fresh
appropriate order after giving an opportunity to the
applicant to show cause in the matter.

9. In the present case, the impugned order dated
21.3.1994 states that the conditions mentioned under
Rule 7 of CCS (Revised Pay) Rules, 1986 were not fulfilled
and hence, the over-payments were to be recovered from
the applicants. I am in respectful agreement with the
D.B. Judgment in the case of T.R. Mirdha (D.A. No.
738/94) which has upheld the validity of the impugned
order dated 21.3.1994. Accordingly, the impugned order
dated 21.3.1994 (Annexure A-1) is upheld. ~~However,~~

In the present case, since the applicants are serving officers in the office of the respondents, there will be no bar to the over-payments of pay being recovered from their pay in accordance with the relevant rules.

Interim Order restraining the recovery of over-payments
The application is dismissed
is hereby vacated. No costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (Judicial)

* As regards those who have retired, if any, the respondents may take such action as may deem fit in accordance with law.

pg2b
S-172
10/1/95

Lines added
Vide order
at 4/17/95 in
RA-130/95 in
on 7/4/95.

Q pg2b
S-172
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